

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of**

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC, DEBTOR-IN-POSSESSION  
Application to Assign Licenses to Choctaw  
Holdings, LLC**

**MARITIME COMMUNICATIONS/LAND  
MOBILE, LLC, DEBTOR-IN-POSSESSION  
Applications to Modify and to Partially Assign  
License for Station WQGF 318 to Southern  
California Regional Rail Authority**

**Application for New Automated Maritime  
Telecommunications System Stations**

**Order to Show Cause, Hearing Designation  
Order, and Notice of Opportunity for Hearing**

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)  
) **WT Docket No. 13-85**  
) **FCC File No. 0005552500**  
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)  
) **FCC File Nos. 0004153701 and**  
) **0004144435** **Accepted/Files**  
) **OCT 31 2014**  
) **Federal Communications Commission**  
) **FCC File No. 0002303355** **Office of the Secretary**  
)  
)  
) **EB Docket No. 11-71**  
) **File No. EB-09-IH-1751**  
) **FCC File Nos. 0004030479,**  
) **0004193028, 0004193328, 0004354053,**  
) **0004309872, 0004310060, 0004314903,**  
) **0004315013, 0004430505, 0004417199,**  
) **0004419431, 0004422320, 0004422329,**  
) **0004507921, 0004153701, 0004526264,**  
) **0004636537, and 0004604962**

**To: Marlene H. Dortch, Secretary**

**DEMCO REPLY TO**  
**HAVENS' OPPOSITION TO PETITION FOR RECONSIDERATION**

Dixie Electric Membership Corporation ("DEMCO"), by its attorneys and pursuant to Section 1.106(h) (47 C.F.R. § 1.106(h)) of the Commission's Rules, hereby submits this Reply to the Opposition filed by Skytel-2 Entities ("Havens" or "Havens' Opposition") to DEMCO's Petition for Reconsideration ("MO&O Reconsideration")<sup>1</sup> of the Commission's Memorandum

<sup>1</sup> DEMCO Petition for Reconsideration of Memorandum Opinion and Order, WT Docket No. 13-85, EB Docket No. 11-71, October 14, 2014.

Opinion and Order (“MO&O”)<sup>2</sup> in the above-captioned proceeding. As shown below, the Opposition must be dismissed or denied.

**1. Havens Pleading Is Procedurally Defective and Must Be Dismissed.**

The Opposition filed by Mr. Havens on behalf of affiliated companies is procedurally defective and must be dismissed. While Mr. Havens may have the right to represent himself *pro se*, he has no right to represent the interests of his corporate affiliates in matters relating to the Hearing Designation Order.<sup>3</sup> Only a person duly admitted to the practice of law and in good standing before an appropriate federal or state court “may represent *others* before the Commission.”<sup>4</sup> It is a matter of record that Warren Havens is not a duly authorized attorney in good standing in any jurisdiction and thus as an individual cannot represent entities, whether affiliated or not.

Mr. Havens also has no standing as a corporate officer to represent any corporate affiliate in this proceeding. “[A] duly authorized corporate officer or employee may act for the corporation in any matter *which has not been designated for an evidentiary hearing....*”<sup>5</sup> Since the current matter relates to a hearing designation order, the Opposition filed by Mr. Havens on behalf of the corporations is defective and must be dismissed.

The fact that Mr. Havens joined in the Opposition on behalf of himself does not cure the defect. Nowhere in the Opposition is there any delineation between issues and arguments that pertain to Mr. Havens as an individual and issues and arguments that pertain to the corporate

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<sup>2</sup> In re Maritime Communications/Land Mobile, LLC, Debtor-in-Possession Application to Assign Licenses to Choctaw Holdings, LLC, Memorandum Opinion and Order, FCC 14-133 (*rel.* Sept. 11, 2014).

<sup>3</sup> Maritime Communications/Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, FCC 11-64 (*rel.* Apr. 19, 2011) (“HDO”).

<sup>4</sup> 47 C.F.R. §1.239(a). (emphasis added).

<sup>5</sup> 47 C.F.R. §1.21 (d) (emphasis added).

entities. Parties responding to the Opposition and the Commission itself should not be made to pick and choose which arguments they believe are being made directly by Mr. Havens on behalf of himself and which arguments are being made in clear violation of the rules by Mr. Havens on behalf of others.

In the hearing proceeding, Mr. Havens has been allowed to represent himself, while counsel represents the interests of the corporations based on Mr. Havens' contentions that his interests are separate from the corporate entities. As emphasized by Mr. Havens:

The SkyTel legal entities have separate FCC licenses and other assets, ownership... and activities. They chose their own legal counsel as they see fit.... I have separate financial resources and time from what I commit to managing and interests in SkyTel legal entities.... Skybridge Spectrum Foundation is a non-profit entity.... Under law, it cannot be managed for or undertake commercial activity and has clearly separate 'interests' from the for-profit companies I manage, and myself personally.<sup>6</sup>

As recognized by the presiding judge in the hearing, "[i]t is at times difficult to identify where Mr. Havens' participation in this proceeding ends and where SkyTel's participation begins and *vice versa*."<sup>7</sup> In light of the different interests between Mr. Havens and the corporate parties, it impossible on the face of the Opposition to determine when Mr. Havens is representing himself and when he is representing other parties in violation of the rules. The entire pleading is tainted.

Even if all the issues and interests were identical for Mr. Havens and the corporations, the pleading should have been signed and submitted by legal counsel since *only* legal counsel can represent a corporation in this matter. Where identical interests are involved, the Commission

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<sup>6</sup> Maritime Communications/Land Mobile, LLC, FCC 12M-52, EB Docket No. 11-71, at n. 8 (rel. November 15, 2012) (emphasis in original).

<sup>7</sup> Maritime Communications/Land Mobile, LLC, FCC 12M-52, EB Docket No. 11-71, (rel. November 15, 2012)

requires *corporate counsel* to represent those interests. There is “clear precedent proscribing dual self-representation and representation by counsel” in such situations.<sup>8</sup> In sum, Mr. Havens had no legal authority to file a joint Opposition involving the corporations as parties.

In the interests of fairness to other parties who are continually faced with the abusive tactics of Mr. Havens such as the constant filing of errata and the filing of unauthorized or defective pleadings, the Commission must act decisively. The Opposition filed by a non-attorney on behalf of corporate parties is procedurally defective and must be dismissed.

**2. Havens claim that DEMCO had no legal right to file for Reconsideration of the Hearing Designation Order is without merit.**

Havens claim that DEMCO did not have a lawful right under the Rules to file a Petition for Reconsideration of the HDO is without merit and should be rejected. Havens merely sites to language in the MO&O and adds nothing of substance to the record. In fact, DEMCO’s right to request reconsideration of the Commission’s decision in the HDO forcing it to participate in the hearing while at the same time allowing a similarly situated applicant to be removed from the hearing is fully supported by long established precedent.<sup>9</sup>

Section 1.106 (a) (1) of the Rules unequivocally states that “[a] petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an *adverse ruling with respect to petitioner's participation in the*

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<sup>8</sup> Black Television Workshop, 8 FCC Rcd 4192, at ¶6 (1993).

<sup>9</sup> DEMCO along with a number of other electric utilities and oil and gas companies requested reconsideration of footnote 7 in the HDO which allowed a railroad, Southern California Regional Rail Authority (“SCRRA”), to be removed from the hearing and have its application granted due to the public safety implications of Positive Train Control (“PTC”) while requiring DEMCO and the other Critical Infrastructure Industry (“CII”) applicants to remain in the hearing. See CII Companies’ Petition for Reconsideration, filed May 19, 2011 (EB Docket No. 11-71) (“Petition for Reconsideration”).

*proceeding.*”<sup>10</sup> DEMCO was clearly adversely affected by this ruling requiring *participation in the hearing proceeding*. The other applicant is free to prosecute its application on a “fast track” while DEMCO’s application remains entrenched in an on-going hearing proceeding with no end in sight. In addition, DEMCO’s application will be reviewed under a more stringent standard as it is tied to the character qualifications of MCLM.

The Commission’s decision in the MO&O, supported by Havens, that *forcing* DEMCO to participate in the hearing is not an “adverse ruling” is contrary to longstanding Commission precedent and must be reversed.<sup>11</sup> In *Western States Telephone Company et al*, a party filed a petition for reconsideration of a designation order and sought to be removed from a hearing. Specifically citing Section 1.106 (a) (1), the Commission held: “[w]e will entertain the petition because it involves an alleged adverse ruling respecting petitioner’s participation in the hearing. See, Section 1.106(a)(1) of the Rules.”<sup>12</sup> This controlling precedent – which shows that forcing an entity *into* a hearing is every bit as “adverse” as keeping one *out* of it – was cited by DEMCO in the MO&O Reconsideration but is ignored by Havens.

### **3. DEMCO’s application should be removed from the hearing and granted.**

Havens argues that “the CII Companies should not be able to leverage any exceptional relief extended to SCRRA for getting similar relief.”<sup>13</sup> However, as clearly demonstrated by DEMCO in its Petition For Reconsideration, as an electric utility serving the public safety interests of the Baton Rouge, Louisiana area, DEMCO’s applications is entitled to the same treatment as the railroad and should have been removed from the hearing.

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<sup>10</sup> 47 C.F.R. §1.106(a) (1) (*emphasis added*).

<sup>11</sup> MO&O Reconsideration, at pp. 10-11.

<sup>12</sup> *Western States Telephone Company et. al*, 66 FCC 2d 370 (1977) at ¶ 3.

<sup>13</sup> Havens’ Opposition, p. 7.

Havens offers no legitimate argument in rebuttal. In fact, in his separate Petition for Reconsideration of the MO&O, Havens chastises the Commission for its attempt to differentiate between the railroad and the utilities. In that filing Havens states "...the utilities who were denied Footnote 7 (Footnote 7-like) relief undoubtedly will ask why SCRRRA is different. The alleged rationale is that SCRRRA has to meet a statutory mandate, and railroads have decided to only use 220 MHz-range spectrum for PTC...This rationale shows a complete lack of understanding of the federal and state laws that govern utilities." <sup>14</sup>

As described in the MO&O Reconsideration, the primary use by DEMCO of the channels at issue is for critical public safety applications. The record demonstrates that these channels are needed by DEMCO for critical operations involving weather emergencies, hurricanes, floods, storm recovery, power outages and other critical public safety operations. Like the railroad, DEMCO needs these channels to protect lives and property. In the MO&O, the Commission exempted the SCRRRA application from the hearing so it would not be held in abeyance "for an additional indefinite period."<sup>15</sup> DEMCO's application is legally entitled to the same treatment.

**4. Havens numerous meritless claims outside the scope of DEMCO's Petition for Reconsideration must be rejected.**

Havens raises a number of issues that are untimely and outside the scope of the Petition for Reconsideration. For this reason alone the Commission should reject these meritless arguments as an abuse of process.

Havens claim that DEMCO is "complicit" in a "sham" involving MCLM is baseless. DEMCO entered into its Asset Purchase Agreement with MCLM in October 2010, long before the Commission released its HDO. At the time of the agreement, MCLM was listed in the

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<sup>14</sup> Petition for Reconsideration of Skytel-2 Entities- Errata copy, p, 18.

<sup>15</sup> MO&O, at ¶31.

Commission's records as the fully authorized holder of the AMTS channels at issue. Once issued, the HDO did not convert Havens' allegations against MCLM into proven facts. Most significantly, the HDO did not contain any allegations even remotely questioning DEMCO's good faith in its dealings with MCLM.

Another bogus claim raised by Havens is that the main reason DEMCO still pursues the MCLM spectrum is because it was sold "below market value" due to MCLM's fraud and deceit during the auction. He argues there is "no good reason why these CII Companies cannot pursue market rate transactions for other spectrum."<sup>16</sup> The market value of the spectrum is not at issue in the MO&O Reconsideration, but again DEMCO will respond to clarify the record in light of Havens' allegations.

The amount DEMCO committed to pay MCLM for 1 MHz of AMTS spectrum in the Baton Rouge, Louisiana area, is a matter of public record in the MCLM Bankruptcy proceeding.<sup>17</sup> It exceeds \$500,000 and represents a substantial, fair market investment. Additionally, as reported in the MO&O Reconsideration, DEMCO to date has invested nearly \$2 million in developing its AMTS emergency network for critical public-safety related functions related to the protection of life and property.

Although completely irrelevant to the MO&O Reconsideration, Havens also levels charges of illegal operations against unidentified CII Companies (and their counsel) regarding alleged deficiencies in their filing of Spectrum Leases at the FCC:<sup>18</sup> It is a matter of public record that DEMCO's Spectrum Manager Lease with MCLM was filed with the Commission

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<sup>16</sup> Havens' Opposition, p. 7.

<sup>17</sup> Bankruptcy filing In Re Maritime Communications/Land Mobile, LLC, Voluntary Petition for Chapter 11 Bankruptcy, No. 11-13463 (N.D. Miss. filed Aug. 1, 2011).

<sup>18</sup> Havens' Opposition, pp. 6-7.



on December 8, 2010.<sup>19</sup> Under the Rules, DEMCO was entitled to begin operations under this Lease on December 29, 2010.<sup>20</sup> There is nothing illegal about DEMCO's operations in reliance on the lease filing.

Havens also alleges "unlawful PMRS without authority" and claims "the use of the MCLM spectrum by the CII entities lacks §20.9(b) authority."<sup>21</sup> Again, this untimely allegation is outside the scope of the MO&O Reconsideration, but DEMCO will clarify the record in light of Havens' claims.

The Commission has been duly notified of DEMCO's use of these frequencies for private purposes. On the same day it filed its lease application – December 8, 2010 – DEMCO filed the certification required by §20.9(b)(1) confirming it would be using MCLM's spectrum for private, internal operations, and not to provide commercial service. Section 20.9(b)(2) of the Rules allows 30 days for interested parties to challenge these types of certifications, however, neither Havens nor any other party challenged DEMCO's certification, nor, to DEMCO's knowledge, is there any ground for anyone to do so. DEMCO continues to operate its system for private, internal purposes, not for common carriage, in accordance with its certification.

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<sup>19</sup> FCC File No. 0004526878.

<sup>20</sup> 47 C.F.R. 1.9020(e)(1)(ii).

<sup>21</sup> Havens' Opposition, pp. 6-7.




## **CONCLUSION**

In view of the foregoing, the Commission should dismiss or deny Havens' Opposition, remove from the hearing DEMCO's application to serve the public safety needs of the citizens of the Baton Rouge, Louisiana area and grant the application in the public interest.

**Respectfully submitted,**

**DIXIE ELECTRIC MEMBERSHIP CORPORATION**

A handwritten signature in cursive script, reading "Albert J. Catalano", is written over a horizontal line.

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**October 31, 2014**

## **CERTIFICATE OF SERVICE**

I, Beverly Harding, hereby certify that on this 31<sup>st</sup> of October, a copy of the foregoing Reply to Havens' Opposition To Petition For Reconsideration was filed with the Commission, served on the parties listed below via First Class U.S. Mail and a courtesy copy was provided via electronic mail.

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